

**BEFORE THE MARYLAND  
INSURANCE ADMINISTRATION**

**ALAN POLLACK, M.D., SCOTT MAURER, M.D. &  
THE MEDICAL AND CHIRURGICAL FACULTY OF  
THE STATE OF MARYLAND**

**Complainants**

**v.**

**UNITED HEALTHCARE INSURANCE COMPANY;  
UNITED HEALTHCARE OF THE MID-ATLANTIC, INC.;  
M.D.-INDIVIDUAL PRACTICE ASSOCIATION, INC.;  
OPTIMUM CHOICE, INC.; MAMSI LIFE AND HEALTH  
INSURANCE COMPANY & ALLIANCE PPO, LLC**

**Licensees**

Case No. MIA-2005-12-001

\* \* \* \* \*

**FINAL ORDER**

STATEMENT OF THE CASE  
ISSUE  
SUMMARY OF THE EVIDENCE  
FINDINGS OF FACT  
DISCUSSION  
CONCLUSIONS OF LAW  
ORDER

**STATEMENT OF THE CASE**

This case arises from the assertion by Alan R. Pollack, M.D. ("Dr. Pollack"); Scott T. Maurer, M.D. ("Dr. Maurer"); and the Medical and Chirurgical Faculty of the State of Maryland ("MedChi") (sometimes referred to hereinafter collectively as the "Complainants") that the provider contracting requirements of United HealthCare Insurance Company ("UHIC"); United Healthcare of the Mid-Atlantic, Inc. ("UHMA"); M.D.-Individual Practice Association, Inc. ("MD-IPA"); Optimum Choice, Inc. ("OCI"); MAMSI Life and Health Insurance Company ("MLHC"); and Alliance PPO, LLC

("Alliance") (sometimes referred to hereinafter collectively as the "Licensees" or "United") violate Section 15-112 of the Insurance Article, Annotated Code of Maryland. The Maryland Insurance Administration ("MIA"), after an investigation, concluded that those provider contracting requirements of United at issue in this matter do not violate Section 15-112, and the each of the Complainants requested a hearing.

Complainants' hearing request was granted and a hearing was held on December 19, 2005 before Thomas Paul Raimondi, Associate Deputy Commissioner, on behalf of the Insurance Commissioner, pursuant to Section 2-210(d). The Complainants were represented by Joseph A. Schwartz, III, Esq. and Pamela Metz Kasemeyer, Esq. of Schwartz & Metz, P.A. The Licensees were represented by Lawrence P. Fletcher-Hill, Esq., of Gordon, Feinblatt, Rothman, Hoffberger & Hollander, LLC; David R. Fertig, Esq. of Weil, Gotshal & Manges, LLP and Sharon C. Pavlos, Esq., Associate Senior Executive Vice President & General Counsel of United Health Care.

### **ISSUE**

The issue presented is whether the Licensees violated § 15-112(1) by permitting physicians to join either the single preferred provider organization ("PPO") panel or the single health maintenance organization ("HMO") panel maintained by United for all commercial products sold by all affiliated entities, or both, without also permitting providers to choose or decline to participate with each affiliated company and/or each of the products that it offers.

## SUMMARY OF THE EVIDENCE

### EXHIBITS

Twelve (12) exhibits were admitted on behalf of the MIA. They are:

- MIA Ex. #1 Letter to MIA from Complainant, received 10/21/05
- MIA Ex. #2 Letter to Complainant from MIA, dated 11/1/05
- MIA Ex. #3 Letter to Licensee from MIA, dated 11/1/05
- MIA Ex. #4 Letter to Licensee from MIA, dated 11/3/05
- MIA Ex. #5 Letter to MIA from Complainant, received 11/3/05
- MIA Ex. #7 Letter to MIA from Licensee, received 11/11/05
- MIA Ex. #8 Letter to MIA from Licensee, received 11/17/05
- MIA Ex. #9 Letter to MIA from Licensee, received 11/18/05
- MIA Ex. #10 Letter to Complainant from MIA, dated 11/18/05
- MIA Ex. #11 Letter to MIA from Complainant, received 11/18/05
- MIA Ex. #12 Letter to Complainant from MIA, dated 11/18/05

The Licensee submitted eight (8) exhibits. They are:

- Licensee Ex. #1 Certification of Copy of Legislative Records, dated 12/14/05
- Licensee Ex. #2 Certification of Copy of Legislative Records, dated 12/14/05
- Licensee Ex. #3 Certification of Copy of Legislative Records, dated 12/14/05
- Licensee Ex. #4 Certification of Copy of Legislative Records, dated 12/14/05
- Licensee Ex. #5 Letter to Sid Masri from MIA, dated 9/24/03
- Licensee Ex. #6 Letter to Alan R. Pollack, M.D. from MIA, dated 9/29/03
- Licensee Ex. #7 Memo to The Honorable John A. Hurson; Members, House Committee on Health and Government Operations; & The Honorable Kumar Barve from Joseph A. Schwartz, III, Esq.,

Pamela Metz Kasemeyer, Esq. and J. Steven Wise, Esq., dated  
3/9/04

Licensee Ex. #8 UnitedHealthcare Provider Panels (Commercial Products)

The Complainant submitted (1) exhibit. It is:

Complainant Ex. #1 United Health Care Insurance Company's Medical  
Group Participation Agreement

Six (6) exhibits were admitted on behalf of the Hearing Officer. They are:

Hearing Officer Ex. #1 Notice of Hearing, dated 12/1/05  
Hearing Officer Ex. #2 Complainants Prehearing Statement, dated 12/12/05  
Hearing Officer Ex. #3 Licensees Prehearing Statement, dated 12/12/05  
Hearing Officer Ex. #4 Complainants Hearing Memorandum, dated 12/16/05  
Hearing Officer Ex. #5 Letter to parties from Thomas Paul Raimondi, dated  
12/16/05  
Hearing Officer Ex. #6 Licensee's Memorandum of Law, dated 12/16/05

#### **TESTIMONY**

The Hearing Officer called Mary Moody, Chief Investigator, Life and Health Unit,  
MIA to testify.

Dr. Mauer, Dr. Pollack, and T. Michael Preston, Executive Director of MedChi  
testified on behalf of the Complainants.

Lisa Wagamon, who is employed by UHMA as the Senior Director of Provider  
Networks for Maryland, Delaware and D.C, testified for United.

#### **FINDINGS OF FACT**

After considering all of the evidence, I find the following facts by a preponderance  
of the evidence:

1. Prior to 2004, UHIC and UHMA were affiliated companies which had no corporate affiliation with MD-IPA, OCI, MLHIC, or Alliance.
2. Prior to 2004, UHMA maintained two provider panels on behalf of itself and its affiliate, UHIC. One panel served UHMA's commercial HMO plans. The other panel served the commercial non-HMO plans offered by UHMA and UHIC.
3. Prior to 2004, providers could join UHMA's HMO panel, non-HMO panel, or both. Providers were not, however, allowed to choose among companies or products served within each panel.
4. Prior to 2004, MD-IPA, OCI, MLHIC and Alliance were subsidiaries and affiliates of Mid-Atlantic Medical Services, Inc. ("MAMSI"). MAMSI maintained two provider panels utilized by the MAMSI affiliates and other, unrelated entities to which the panels were made available by contract through Alliance (the "Alliance payor groups"). One panel served HMO products offered by MAMSI's HMO affiliates, including MD-IPA and OCI. The other panel served non-HMO products offered by MAMSI affiliates and Alliance payor groups.
5. Prior to 2004, providers could join MAMSI's HMO panel, non-HMO panel, or both. Providers were not, however, allowed to choose among companies or products served within each panel.
6. In 2004, as a result of a merger transaction, MD-IPA, OCI, MLHIC and Alliance became affiliates of UHIC and UHMA.
7. Subsequent to the 2004 merger, it was determined that UHIC would be the contracting entity for all provider contracts for all Licensees, including the former MAMSI affiliates (MD-IPA, OCI, MHLIC, and Alliance).

8. Consequently, subsequent to the 2004 merger, UHIC has established and maintains two provider panels on behalf of itself and its affiliates, including UHMA and the other Licensees. One panel serves all of the commercial HMO plans offered by UHIC and its affiliates, including Licensees (the "United HMO Panel"). The other panel serves all of the commercial non-HMO plans offered by UHIC and its affiliates, including Licensees (the "United non-HMO Panel").

9. Providers may join the United HMO Panel, the United non-HMO Panel, or both. However, providers may not choose among companies or products served within each panel.

10. Alliance is not an insurance company and does not sell insurance products. Alliance is a network of providers that is leased to various third-party payors, including insurance companies, throughout the Mid-Atlantic region. Currently, the Alliance network is leased to two hundred sixty-two (262) different third-party payors in Maryland, including entities such as the Injured Worker's Insurance Fund ("IWIF") and Aetna.

11. Dr. Pollack is a physician who practices medicine through the Rockville Internal Medical Group ("RIMG"), which is located in Montgomery County, Maryland. On October 7, 1997, RIMG executed a Medical Group Participation Agreement with UHMA. Under that contract, RIMG elected to participate in both the UHMA HMO and non-HMO panels.

12. The 1997 RIMG Agreement defined a "Medical Group Physician as

"[a] Doctor of Medicine ("M.D."), or a Doctor of Osteopathy ("D.O."), duly licensed and qualified under the laws of the jurisdiction in which Health Services are provided, who practices as a shareholder, partner or employee of Medical

Group, and who has executed a Medical Group Physician Participation Addendum, the form of which is attached to this Agreement."

13. Dr. Pollack was a shareholder, partner, or employee of RIMG and executed a Medical Group Physician Participation Addendum on October 7, 1997. Dr. Pollack was, therefore, a Medical Group Physician.

14. The 1997 Pollack Addendum states:

"Medical Group Physician shall have the rights and obligations provided in the Agreement which are applicable to Medical Group, and understands that certain provisions of the Agreement shall also be individually binding on Medical Group Physician, and Plan may require performance of all provisions by Medical Group Physician."

15. In April, 2005, Dr. Pollack and RIMG received, and were requested to execute, a new Medical Group Participation Agreement. The stated purpose of the 2005 RIMG Proposed Agreement was "to join the networks for MAMSI Health Plans and United Healthcare . . . ."

16. Dr. Pollack and United understood that, by virtue of the 2005 RIMG Proposed Agreement, it was United's intent that RIMG and its Medical Group Physicians participate in United's HMO panel or United's non-HMO panel or both. However, with respect to each panel, RIMG and its Medical Group Physicians would have to serve *all* of the products offered by *all* of the affiliated entities served by that panel. Hence, upon execution of the 2005 RIMG Proposed Agreement, RIMG and its Medical Group Physicians, would be required to participate in the non-HMO plans offered by MLH and Alliance if they wished to continue to participate in the non-HMO plans offered by UHIC and UHMA. Similarly, RIMG and its Medical Group Physicians, would be required to participate in the HMO plans offered by MD-IPA and OCI if they wished to continue to participate in the HMO plans offered by UHMA.

17. The 2005 RIMG Proposed Agreement defined a "Medical Group Physician" as

"[a] Doctor of Medicine ("M.D."), or a Doctor of Osteopathy ("D.O."), duly licensed and qualified under the laws of the jurisdiction in which Health Services are provided, who practices as a shareholder, partner or employee of Medical Group, or who practices as a subcontractor of Medical Group."

18. The 2005 RIMG Proposed Agreement further states that, with certain exceptions not applicable here, "all Medical Group Professionals will participate in United's network." Under the 2005 RIMG Proposed Agreement, the term "Medical Group Professionals" includes a Medical Group Physician.

19. RIMG and Dr. Pollack refused to execute the 2005 RIMG Proposed Agreement.

20. Currently, RIMG and Dr. Pollack continue to participate in the HMO and non-HMO panels for UHIC and UHMA under the 1997 Agreement and 1997 Pollack Addendum.

21. Dr. Maurer is a physician who practices in Howard County, Maryland. On April 29, 2000, Dr. Maurer executed a Physician Participation Agreement with UHMA, through which he elected to participate in the UHMA HMO and non-HMO panels. Also in 2000, Dr. Maurer executed a Provider Agreement with Alliance, acting on behalf of the MAMSI affiliates, through which he elected to participate in the non-HMO panel. Dr. Maurer declined to participate in the MAMSI HMO panel.

22. In 2005, UHIC presented Dr. Maurer with, and asked Dr. Maurer to execute, a new Physician's Agreement. The stated purpose of the request was "to join the networks for MAMSI Health Plans and United Healthcare . . . ." The cover letter accompanying the 2005 Maurer Proposed Agreement stated that "[b]y signing the enclosed new Physician's Agreement, you will be a participating physician for all MAMSI Health Plans and UnitedHealthcare commercial products."

23. Dr. Maurer and United understood that it was United's intent that, by virtue of the 2005 Maurer Proposed Agreement, Dr. Maurer would participate in United's HMO panel or United's non-HMO panel or both. However, with respect to each panel, Dr. Maurer would have to serve *all* of the products offered by *all* of the affiliated entities served by that panel. Hence, upon execution of the 2005 Maurer Proposed Agreement, Dr. Maurer would be required to participate in the non-HMO plans offered by MLH and Alliance if he wished to continue to participate in the non-HMO plans offered by UHIC and UHMA. Similarly, Dr. Maurer would be required to participate in the HMO plans offered by MD-IPA and OCI if he wished to continue to participate in the HMO plans offered by UHMA.

24. Dr. Maurer refused to execute the 2005 Maurer Proposed Agreement.

25. Currently, Dr. Maurer continues to participate in the HMO and non-HMO panels for UHIC and UHMA and the Alliance panel under the 1997 Agreements with UHMA and Alliance.

26. On October 21, 2005, Dr. Pollack, Dr. Maurer, and MedChi, through their attorney, wrote a letter to the Maryland Insurance Administration alleging that Licensees' provider contracting requirements violated §15-112(l). (MIA Ex. #1) Specifically,

27. On November 1, 2005, the MIA advised Licensees of the violation asserted and requested a response. (MIA Ex. #3)

28. On November 3, 2005, the Complainants, through their attorney, requested an expedited investigation and decision by the MIA. (MIA Ex. #5)

29. On November 17, 2005, Licensees responded to the MIA's November 1, 2005 request for response, articulating the basis for its position that its contracting requirements did not violate Ins. Art. §15-112(l). (MIA Ex. #7)

30. On November 18, 2005, the MIA, by letter dated November 22, 2005, advised the Complainants through their attorney that Licensees were not in violation of § 15-112(l) and that they had thirty days to request an administrative hearing (the "Determination"). (MIA Ex. #10)

31. On November 18, 2005, the Complainants through their attorney requested a hearing on the Determination. (MIA Ex. #11)

32. On November 18, 2005, the Complainants through their attorney requested that their hearing request be denied stating that "the MIA has already set forth its interpretation of the statute in its November 18, 2005 decision[.]" thus allowing the Complainants to proceed judicially. (MIA Ex. #11)

33. On December 1, 2005, a hearing notice was issued from the undersigned, scheduling an administrative hearing for December 19, 2005. (H.O. Ex. #1)

34. MedChi is not a health care provider. MedChi is a professional association of physicians.

35. On September 30, 2005, Craig Fisher, D.O. assigned to MedChi his legal rights with respect to claims in the lawsuit known as *The Medical and Chirurgical Faculty of the State of Maryland, et al. v. United Health Insurance Company, Inc., et al.*

36. On October 3, 2005, Jerry Farber, M.D. assigned to MedChi his legal rights with respect to claims in the lawsuit known as *The Medical and Chirurgical Faculty of the State of Maryland, et al. v. United Health Insurance Company, Inc., et al.*

## DISCUSSION

### **I. ADMINISTRATIVE STANDING**

United filed a preliminary motion challenging the administrative standing of MedChi and of Dr. Pollack, as an individual, to request a hearing on the Determination. The motion was held *sub curia* pending the hearing.

Section 2-210(a) requires the Commissioner to hold a hearing "on written demand by a person aggrieved by any act of, threatened act of, or failure to act by the Commissioner . . . ." MedChi and Dr. Pollack requested a hearing on the Determination, claiming that they each were aggrieved by the MIA's failure to prohibit the United contracting requirements at issue.

#### **A. MedChi**

United argues that Med Chi lacks standing and is not a proper party to these proceedings, because MedChi is not aggrieved by the MIA's determination that United's provider contracting requirements do not violate the Insurance Article. Specifically, United notes that MedChi is not itself a health care provider, but is an association of physicians. Citing *Maryland Waste Coalition, Inc. v. Maryland Dept. of Env't*, 84 Md. App. 544, 556 (1990), United asserts that MedChi lacks standing as an association, because it neither possesses nor asserts any interest separate and apart from those of its individual members that may be adversely affected by United's contracting requirements.

MedChi does not dispute United's contention that MedChi lacks standing as an association. MedChi does not dispute the legal proposition that, in order to have standing in its own right as an association, it must possess an interest separate and

apart from those of its individual members. MedChi also does not dispute that it has no such an interest. MedChi contends, however, that it has standing by virtue of the assignments given to it by Dr. Craig Fisher and Dr. Jerry Farber.

I agree with United that MedChi is not a person aggrieved by the MIA's Determination and, thus, conclude that MedChi has no standing to participate in this proceeding. As the Maryland Court of Appeals has stated, one is "aggrieved" if one "has 'an interest "such that he [or she] is personally and specifically affected in a way different from ... the public generally.'" " *Jones v. Prince George's Co.*, 378 Md. 98. 117 (2003)(quoting *Sugarloaf v. Dept. of Env't*, 344 Md. 271, 288 (1996) (some internal quotation marks omitted)).

First, MedChi lacks standing in its capacity as an association. Maryland law requires that "an association must have a property interest, separate and distinct from that of its individual members, which may be affected by the challenged action in order to have standing to sue." *Maryland Waste Coalition*, 84 Md. App. At 556. MedChi neither has nor asserts any unique or specific interest that it holds in its individual capacity as an association that has been injured by United's contracting requirements.

Second, I agree with United that the assignments in question do not bestow administrative standing on MedChi. The issue before the MIA was whether United is in violation of State insurance regulatory laws. Only a person who has been injured by that alleged violation and, thus, by the MIA's conclusion that no such violation occurred, is "aggrieved" by the Determination and, thus, entitled to a hearing on that Determination.

The Farber and Fisher assignments each purport to convey to MedChi "all" of the "legal rights with respect to claims to be made" in a lawsuit to be filed by MedChi in the Circuit Court for Montgomery County. The assignments also authorize MedChi to "ask, demand, and make all claims available against the Defendants in the lawsuit" as the "true and lawful attorney-in-fact" of the assignees.

On their face, the assignments do not transfer to MedChi any right or interest in any injury that the individual assignees (Farber and Fisher) sustained as a result of United's contracting requirements. Rather, the assignments authorize MedChi to make claims as attorney-in-fact on behalf of the assignees and then assigns to MedChi assignees "legal rights" in whatever specific claims are to be asserted *in that lawsuit*. The assignments do not purport to give MedChi the right to act on behalf of the assignees in this administrative proceeding or to assign to MedChi any and all of their respective rights with respect to the underlying contracts or any and all injuries that the assignees allegedly have sustained as a result of United's contracting requirements.

I am persuaded by United that the assignments do not transfer to MedChi any injury such that MedChi is aggrieved within the meaning of the Insurance Article. I conclude, therefore, that MedChi lacked administrative standing to seek a hearing and, thus, is not a proper party. United's motion is granted and MedChi's hearing request is, therefore, dismissed.

**B. Dr. Pollack**

United also contends that Dr. Pollack, as an individual, lacks administrative standing. According to United, Dr. Pollack's complaint to the MIA concerned RMIG, and not Dr. Pollack individually. United argues that the contract at issue "is with

[RMIG], not with any of the individual providers who are members of" RMIG. [Motion to Dismiss at 10 - 11].

United is mistaken. The 1997 RMIG Agreement and the 2005 RMIG Proposed Agreement include Dr. Pollack as an individual. Dr. Pollack is a Medical Group Physician as that term is defined in each of those Agreements. He is the subject of the 1997 Addendum, which subjects him to, and gives him the benefit of, the terms of the 1997 Agreement. The demand by United that RMIG execute the 2005 RMIG Proposed Agreement, and the contracting requirements that United now maintains, directly and individually impact Dr. Pollack's individual and personal rights and obligations under the 1997 Addendum. Clearly, therefore, he is individually aggrieved by the Determination and, thus, was entitled to request a hearing on that Determination. United's motion challenging Dr. Pollack's individual standing is, therefore, denied as to Dr. Pollack, who remains a party to this proceeding in his individual capacity.

## II. THE MERITS

Section 15-112(l) of the Insurance Article states in pertinent part:

§ 15-112. Provider panels.

(l) *"Health benefit plan" and "provider panel" defined; limitations of service on provider panels; termination; notice --* (1) (i) In this subsection the following words have the meanings indicated.

(ii) 1. "Health benefit plan" has the meaning stated in § 15-1201 of this title.

2. "Health benefit plan" includes dental plans and other health benefit plans that contract with dentists to offer dental care services.

(iii) "Provider panel" includes an arrangement in which any provider may participate solely by contracting with the carrier to provide health care services at a discounted fee-for-service rate.

(2) Except as provided in paragraph (3) of this subsection, a carrier that offers coverage for health care services through one or more health benefit plans or contracts with providers to offer health care services through one or more provider panels may not require a provider, as a condition of participation or continuation on a provider panel for

one health benefit plan of a carrier, to serve also on a provider panel of another health benefit plan of the carrier.

The term "carrier" includes entities that arrange provider panels for carriers.

The fundamental issue presented in this matter is whether United violated the aforesaid statute by maintaining two provider panels for all of the commercial business of all of its affiliated entities such that physicians are required to participate with each affiliated health insurer for each of its health products within a distribution system.

UHIC has organized one non-HMO panel which it makes available to all of its affiliates that sell non-HMO products and a separate HMO panel which it makes available to all of its affiliates that sell HMO products. A provider may choose to participate in none, one, or both. UHIC does not force providers to participate in one of the panels in order to participate in the other.

Complainants, United and the MIA all agree that the critical question to be resolved for purposes of the interpretation of Section 15-112(l) is the meaning of the term "health benefit plan," as the law is directed at the "panel" established for a "health benefit plan." It is not entirely clear from the submissions made by Complainants whether Complainants believe that the term "health benefit plan" means the individual contracts issued by a carrier, a particular product approved for sale and being marketed by a carrier, or each carrier when acting in its capacity as a risk-bearing entity. Regardless, however, of which interpretation Complainants espouse, it has been the long-standing position of the MIA that the term "health benefit plan" means a distribution system.

As the MIA's November 22, 2005 letter states, individual carriers that form their own provider panels solely to service the products sold by that individual carrier do not

form separate panels for each individual or group policy or contract issued. A company does not form a provider panel to serve "Company X" and a separate provider panel to serve the "Smith family." Nor could an insurer every be expected to enter into a separate contract with a provider for every policy it sells. Mindful of this, the MIA has concluded that the term "health care provider" does not mean an individual contract sold by a carrier to a specific individual or group.

In addition, as the MIA notes in its November 22, 2005 letter, not all provider panels are formed by an individual carrier in order to provide services under policies issued by that carrier. Rather, as the statute recognizes, there are entities (including insurance companies like UHIC) that form provider panels which (with the agreement of the contracting provider) are made available to various other third-party payers, some of which may be related and some of which may not. Given the nature of these services, which clearly are recognized and contemplated by the statute, the MIA has concluded that the term "health benefit plan" does not mean a particular insurance company, such that a provider that joins a panel under a contract which, by its terms, is made available to other insurance companies or third-party payers can pick and choose among those assignees of the provider contract. Such an interpretation would essentially eliminate the ability of an entity to create a panel which is assignable to third-party payers and, thus, would ignore the express recognition of such panels by the statute.

The MIA has construed the term "heath benefit plan" to refer to the type of plan offered. Plan types are generally distinguished by primarily by distribution system or licensure, such as HMO versus non-HMO plans.

I am persuaded by the testimony of Ms. Moody and the submissions, including the legal memoranda submitted by United, that the MIA's interpretation of the law is correct. This interpretation is entirely consistent with the legislative history of this section, as outlined in the Exhibits submitted by the parties. The legislative history of §15-112(l) shows that it was written to clarify prior law that, on its face, allowed a carrier to require a provider to service both HMO and non-HMO plans. The purpose of §15-112(l) is to prevent carriers<sup>1</sup> from conditioning non-HMO service on HMO service. No mention is made of various HMO and non-HMO products under this law.

Complainants admit that Licensee United communicated to them that they may choose to participate in only HMO products or only in PPO products, but in doing so must participate in all products of that type offer by all of the Licensees. This is consistent with the Administration's interpretation of the law.

Page 1 of United's "Medical Group Participation Agreement" states:

This Agreement is entered into by and between United Health Care Insurance Company, contracting on behalf of itself, United Healthcare of the Mid-Atlantic, Inc., *and the other entities that are United's Affiliates* (collectively referred to as "United") and [redacted] 'Medical Group'.

*(emphasis added)*. Clearly, United is acting here as an entity that arranges provider panels, albeit on behalf of its affiliated entities. Complainants, therefore, have knowingly agreed to provide services for *any affiliates* of United. It seems that the issue for the Complainants is that in the past they had unsatisfactory dealings with MAMSI, which is now affiliated with United. They simply do not want to deal with the MAMSI plans because of prior billing disputes and paperwork requirements. However, all of the

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<sup>1</sup> Under § 15-112, a "carrier" includes an entity that arranges a provider.

doctors readily admit that they could close their doors to new patients. Taking on additional patients as a result of this merger is not the issue here.

To allow what Complainants suggest would be to permit providers to choose either individual health benefit plans or to choose from among carriers when an entity arranges a provider panel. Were carriers required to permit providers to opt in and out of each individual or group policy or contract that they issued, carriers would be required to establish and maintain a separate provider panel for each such individual group policy or contract. Most carriers, however, have issued thousands of individual policies and group contracts in Maryland. Individual carriers that form their own provider panels do not form separate panels for each individual or group policy or contract issued. The Administration has concluded that the term "health benefit plan" does not mean an insurance company, such that a provider, having agreed to participate in a network, could agree to participate with respect to one company but not with respect to another. Rather, the Administration construes "health benefit plan" in the provider panel law to refer to a type of delivery system offered by a carrier or entity that arranges a provider panel, such as HMO or non-HMO options.

Therefore, the Administration finds that Licensee United is not required to allow providers, namely Complainants, to choose a la carte which health benefit plans in which they will participate. United is correct in asking the Complainants to choose a *type* of health benefit plan – HMO, non-HMO, or both – in which to participate. If Complainants feel that the additional prospective patients under the newly affiliated United companies will overwhelm their practices, they may choose to close their doors to new patients until such time as they are prepared to take on these patients.

### **CONCLUSIONS OF LAW**

Based upon the foregoing Findings of Fact and Discussion, I conclude, as a matter of law, that Licensee's provider contracts are not in violation of Md. Code Article 15-112(l).

### **ORDER**

**WHEREFORE**, it is hereby **ORDERED** that United HealthCare Insurance Company; United Healthcare of the Mid-Atlantic, Inc.; M.D.-Individual Practice Association, Inc.; Optimum Choice, Inc.; and MAMSI Life and Health Insurance Company & Alliance PPO, LLC may continue to use the contracts submitted to its providers in accordance with the authority outlined in Md. Code Ann. § 15-112(l); and it further ordered

**ORDERED**, that the records and publications of the Maryland Insurance Administration reflect this decision.

It is so **ORDERED** this \_\_\_\_\_ day of February , 2006.

**R. STEVEN ORR**  
Insurance Commissioner

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**THOMAS PAUL RAIMONDI**  
Associate Deputy Commissioner